

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

PHILLIP JONES,

Petitioner,

Case No. 11-10428

v.

Honorable Patrick J. Duggan

J. S. WALTON,

Respondent.

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**ORDER DECLINING TO ISSUE PETITIONER A CERTIFICATE OF  
APPEALABILITY**

At a session of said Court, held in the U.S.  
District Courthouse, Eastern District  
of Michigan, on August 5, 2011.

PRESENT: THE HONORABLE PATRICK J. DUGGAN  
U.S. DISTRICT COURT JUDGE

On February 3, 2011, Phillip Jones (“Petitioner”), a federal prisoner incarcerated at the Federal Correctional Institution in Milan, Michigan, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. The Court summarily dismissed his petition in an Opinion and Order dated March 28, 2011, holding that Petitioner had failed to establish that he was actually innocent or that the remedy afforded by 28 U.S.C. § 2255 was inadequate to test the legality of his confinement.<sup>1</sup>

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<sup>1</sup> The Court noted in its Opinion and Order that due to Petitioner’s lengthy history of filing non-meritorious pleadings and motions, the Sixth Circuit has issued an Order prohibiting him from filing “ANY” document with the Sixth Circuit or the district court challenging his conviction unless he has : (1) a claim that relies on a new rule of

Petitioner has appealed this Court's ruling to the Sixth Circuit Court of Appeals. The Court is in receipt of a letter from the Sixth Circuit explaining to Petitioner that a briefing schedule for his appeal will not be issued until after the District Court and the Court of Appeals have issued rulings on a certificate of appealability.

This Court previously declined to issue a certificate of appealability, noting that it did not believe a certificate was necessary for appeal because Petitioner is proceeding under § 2241 rather than § 2255. *See* 3/28/11 Op. & Order at 6 n.1 (citing *Witham v. United States*, 355 F.3d 501, 504 (6th Cir. 2004)); *see also* 28 U.S.C. § 2253(c).

Accordingly,

**IT IS ORDERED** that the Court **DECLINES** to issue Petitioner a certificate of appealability.

s/PATRICK J. DUGGAN  
UNITED STATES DISTRICT JUDGE

Copies to:

Phillip Jones, #18419-039  
FCI Milan  
Federal Correctional Institution  
P.O. Box 1000  
Milan, MI 48160

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constitutional law made retroactive by the Supreme Court on collateral review; or (2) a factual predicate that could not have been previously discovered through due diligence which would establish by clear and convincing evidence that no fact finder would have found Petitioner guilty. *In re Jones*, No. 02-1462 (6th Cir. Oct. 22, 2002).